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SENT TO: AMEMBASSY TOKYO 1809/
FCN Treaty UR 2372

Fisheries reservation necessary. DEPT
approval JAP formula concerned only inland
and coasting trade. Regret misunderstanding.

Dulles

(V.G.S.)

DULLES

DEPARTMENT OF STATE A/CDC/MR	
REVIEWED BY <i>K. D. Dell</i>	DATE <i>9-30-82</i>
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JAN 26 1953 P.M.

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FOREIGN SERVICE DESPATCH

FROM AMEMBASSY, TOKYO

1473

DESP. NO.

TO THE DEPARTMENT OF STATE, WASHINGTON.

January 29, 1953
DATE

REF Embdes 1279, January 7, Deptel 1809, January 26, 1953

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SUBJECT: FCN Treaty Negotiations

The Ambassador recently took the opportunity of discussing with Minister for Foreign Affairs OKAZAKI the status of the FCN Treaty under discussion between the Embassy and the Ministry, and to inquire whether the latter would soon be in a position to conclude formal negotiations. Minister Okazaki reiterated his great personal interest in the early conclusion of the FCN Treaty and expressed the hope that his Ministry could coordinate the views of other Ministries and agencies in the very near future, thus formalizing the position of the Japanese Government with respect to the various points on which agreement has not yet been reached.

Following the Ambassador's conversation with Minister Okazaki, the Economic Counselor and the Financial Attache called on Minister of Finance MUKAI to discuss the advisability of early amendment of the Foreign Investment Law. The Economic Counselor and the Financial Attache invited Minister Mukai's attention to various aspects of this Law which impose on American investors numerous restrictions on the use of profits in Japan. It was also pointed out that the present law does not apply to branch offices of American firms or to American enterprises established in Japan before the enactment of the law. Therefore, such branch offices and American firms have no established rights in the remittance of profits, which instead may be authorized from time to time and at varying percentage rates by the Ministry of Finance upon individual application. These offices and firms are, however, subject to the various restrictions of the Foreign Investment Law while enjoying none of its benefits. The observations of the Economic Counselor were essentially the same as those previously transmitted to the Department on this subject (Enclosure 1 to the despatch under reference).

Minister Mukai was most sympathetic and evidenced sincere interest and understanding. He is, of course, keenly aware of the problems raised by the Foreign Investment Law since he is himself a successful businessman recently appointed to the Cabinet. When, in the course of the conversation, a career official of the Ministry pointed out that special controls over the activities of branch offices might be needed to prevent illegal transfers of accounts, Minister Mukai replied that account manipulation was no more difficult for a firm incorporated in Japan, coming within the provisions of the law, than it was for a branch office of a foreign firm. Hence, he added, it was unrealistic to consider special controls applicable only to the latter type of enterprise. Minister Mukai asked a number of pertinent questions of the Economic Counselor and the Financial Attache, and the conversation lasted almost an hour despite advice received by the latter that the Minister was too busy to grant

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JAN 30 1953

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them a lengthy interview. It is believed that Minister Mukai fully appreciated the various problems raised and that he is interested in corrective action although certain career officials in the Ministry may resist major modifications of the Foreign Investment Law. A number of these officials however, appear to be changing their views on this matter and some have recently expressed the opinion that the law should be amended at an early date. A few days after the interview with the Minister, the latter approached the Economic Counselor at a social function and expressed the hope that another and longer conversation might soon be arranged for the purpose of exploring possible revisions to the law as well as the general problem of encouraging American investment in Japan.

Probably typical of the Japanese press, as well as of some official statements by Government agencies, is the report published the day following the interview with Minister Mukai (Mainichi, January 22) to the effect that the Economic Counselor "visited the Finance Ministry to make a proposal for speeding negotiations on the U.S.-Japan Treaty of Commerce and Navigation which has been pending since last year". Minister Mukai is reported to have replied that his Ministry had not yet reached a decision on whether to place restrictions on the induction of foreign capital, the relationship between Government investment and foreign capital, and the problem of remittance of profits. The Mainichi added, as did several other newspapers, that: "Foreign Ministry authorities hinted that it was wrong of Counselor Waring to ask the Finance Ministry to accelerate conclusion of the treaty, since this was a matter which should be taken up with the Foreign Ministry itself. Some Foreign Ministry quarters consider that Mr. Waring had the intention to conclude the treaty before January 20 (NOTE: the Embassy fails to see how a conversation on January 21 might have helped in this regard), in keeping with the will of the Democratic administration. Since the Republican administration has been inaugurated, there is now no need for the Embassy to hasten the conclusion." It is also typical of Japanese officialdom that when this article was brought to the attention of officials of the Ministry of Foreign Affairs they found it most amusing, disclaimed all knowledge, and also, somewhat inconsistently, declared that it was a "misquote".

Despite other controlled press "leaks" concerning the possibility that negotiation of the Treaty may be postponed until April or May ("by which time the new economic policies of the Eisenhower administration will be worked out, and which will result in fundamental changes in treaty points already agreed upon"), it is apparent that the Ministry of Foreign Affairs continues to hope for an early conclusion of the Treaty. As a result of the conversations with Minister Okazaki and Mukai, their respective working-level officials have accelerated their work on the Treaty.

Minister Okazaki instructed his Economic Affairs Bureau to complete its review of the proposed negotiation points submitted by the Ministry of Finance and to submit a detailed report to him by January 26. The Minister indicated that he would present the draft Treaty to the Cabinet at its meeting the following day. Cabinet consideration has, however, been postponed since it appears that neither Minister Okazaki nor Minister Mukai were fully briefed on all pending problems, and a discussion of the draft Treaty is now scheduled for the next Cabinet meeting on January 30.

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The Embassy has been interested in following the numerous recent press reports which allege to represent the outcome of continuing negotiations between the Embassy and the Ministry of Foreign Affairs. Actually, the Embassy's informal discussions with the latter were concluded in November and there has been no exchange of views on possible negotiation points since that time. There have been, of course, a number of informal conversations with individual officials of the Ministry largely for the purpose of clarifying previous statements of the United States position or answering new questions raised by Japanese Government agencies. The recent press reports are therefore the result of "negotiations" within the Government itself, principally between the Ministries of Finance and Foreign Affairs.

Meetings were held with officials of the Ministry of Foreign Affairs on January 23 and 24 at their request in order that several points might be clarified for their preparation of the report desired by Minister Okazaki. Their questions involved refinements of problems previously discussed in connection with business and investment activities. An example of their questions is: "In case an alien investor does not request remittance of the capital invested or profits accruing therefrom in Japan, thus having no direct bearing on the protection of monetary reserves, can the 'screening provision' be invoked against foreign investment of this kind?" The Embassy's answer was that the screening provision was not one which is to be "invoked", and that it clearly could not be used to discriminate against or restrict investment of the type mentioned since screening was permissible only on balance of payments grounds.

At the meeting on January 23 the Embassy furnished officials of the Ministry with five copies of the mimeographed December 1952 text of the Treaty and discussed the corrections listed in the Department's Airgram No. A-512 of January 8. The Ministry's representatives accepted these corrections and indicated that they preferred the deletion of the clause "or any subdivisions, territories and possessions thereof" to the alternative revision suggested in connection with paragraph 1, Article IX. It is therefore requested that the Department revise its copies of the December 1952 text to conclude paragraph 1 with the words (line 9) "of the other Party."

With reference to paragraph 8 of the Protocol, the Japanese preferred to delete the word "these" (line 6), and it is requested that the Department revise its copies accordingly. The final clause of the Protocol has been replaced by a clause identical with its counterpart in the treaty proper.

The insertion of "national fisheries" following the words "coasting trade", paragraph 3, Article XIX, was discussed with the representatives of the Ministry, who again expressed the opinion that they believe this additional phrase to be unnecessary and voiced the hope that it would not be inserted. Following the receipt of the Department's telegram 1809, January 26, the Embassy advised an official of the Ministry informally that we regard the fisheries reservation as necessary to this Article, and that this position would be made of formal record at a subsequent meeting. This official declared that he was somewhat disappointed since the Ministry believed "national fisheries" to be only a "vague concept", subject to varying interpretations. He added that it might be necessary to

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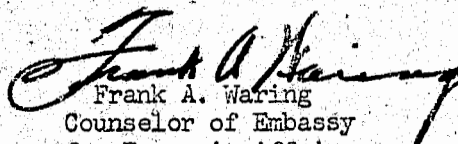
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From _____

formulate a mutually acceptable definition, with which he thought the Japanese Government would not object to the inclusion of this phrase in Article XIX.

For the Ambassador:


Frank A. Waring
Counselor of Embassy
for Economic Affairs

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